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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 Z.D., by and through her parents and
8 guardians, J.D. and T.D., individually, on
9 behalf of THE TECHNOLOGY ACCESS
10 FOUNDATION HEALTH BENEFIT
PLAN, and on behalf of similarly situated
individuals,

11 Plaintiffs,

12 v.

13 GROUP HEALTH COOPERATIVE, *et.*
al.,

14 Defendants.

No. C11-1119RSL

ORDER APPROVING
SUBSTANCE OF PROPOSED
CLASS NOTICE, REQUIRING
DIRECT MAIL DELIVERY

15 This matter comes before the Court *sua sponte*. On June 1, 2012, the Court
16 found that “Defendants’ official policy of denying coverage for medically necessary
17 neurodevelopmental therapy to treat insureds with DSM-IV-TR mental health
18 conditions simply because an insured is over the age of six violates the plain
19 requirements of RCW 48.46.291.” Dkt. # 78 at 13. It ordered Defendants to
20 “immediately cease denying coverage” on the basis of age and to “notify each of their
21 beneficiaries of this Court’s Order.” Id. It gave Defendants 21 days to submit their
22 proposed notice to the Court. Id.

23 On June 22, 2012, Defendants submitted their initial proposed notice. Dkt. # 82.
24 Seven days later, they submitted a revised notice approved by class counsel. Dkt. # 85.
25 Defendants also notified the Court of their intent to provide the required notice in two

1 tiers: general notice to all beneficiaries via Group Health's web site and direct mail
2 notice to a more limited group of beneficiaries—those who “(1) have diagnostic codes
3 (ICD-9 codes) for DSM-IV mental health conditions for which treatment with
4 neurodevelopmental therapies may be or may have been medically necessary, and (2)
5 requested a referral or submitted a claim to Group Health for neurodevelopmental
6 therapies.” Dkt. # 82. They indicated that the process of identifying the “direct mail”
7 group may take up to four weeks. Dkt. # 83. Class counsel has indicated that it does not
8 oppose Defendants' proposed two-tier system in the abstract, but makes clear that it will
9 oppose Defendants' proposal if the resulting direct mail count is too low.

10 Having reviewed the substance of the revised proposed notice, the Court
11 approves it. Like class counsel, however, the Court has serious concerns about the
12 proposed two-tier system. The Court's notice requirement was intended to be remedial
13 in nature—to provide notice of the Court's rulings and their entitlement to coverage to
14 all beneficiaries who “require, or are expected to require, neurodevelopmental therapy
15 for the treatment of a qualified mental health condition,” Dkt. # 78 at 3. And the Court
16 is not confident that the proposed two-tier system would reasonably guarantee that
17 result. In the Court's experience, most people open and review their mail; few peruse
18 their insurer's web site absent some external stimuli.

19 In sum, the Court approves of the substance of the revised notice (Dkt. # 85). It
20 does not, however, approve of the proposed two-tier notice scheme. The Court
21 ORDERS Defendants to provide the now-approved notice to each of its beneficiaries via
22 direct mail within two weeks of the date of this Order.

23 DATED this 6th day of July, 2012.

24 

25 Robert S. Lasnik
26 United States District Judge